

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>GERMAIN D. DAVIS, JR.,</b>	)	<b>CASE NO. 1:14CR58</b>
	)	<b>1:16CV1671</b>
	)	
<b>Petitioner,</b>	)	<b>JUDGE JOHN R. ADAMS</b>
	)	
<b>v.</b>	)	
	)	
<b>UNITED STATES OF AMERICA,</b>	)	<b>ORDER AND JUDGMENT ENTRY</b>
	)	
<b>Respondent.</b>	)	
	)	

The instant matter is before the Court upon Petitioner’s Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, filed pursuant to 28 U.S.C. § 2255. Doc. 103. The petition is DENIED.

The sole timely issue presented in the pending § 2255 motion is Petitioner’s contention that he was sentenced under a statutory provision that he claims is similar to a statutory provision ruled unconstitutional by the Supreme Court. The Sixth Circuit has resolved this issue:

Taylor’s final argument is that the Supreme Court’s decision in *Johnson v. United States*, — U.S. —, 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015), compels the conclusion that 18 U.S.C. § 924(c)(3)(B), the statute supporting two of Taylor’s convictions, is unconstitutionally vague. Because § 924(c)(3)(B) is considerably narrower than the statute invalidated by the Court in *Johnson*, and because much of *Johnson*’s analysis does not apply to § 924(c)(3)(B), Taylor’s argument in this regard is without merit

*United States v. Taylor*, 814 F.3d 340, 375–76 (6th Cir. 2016). Accordingly, this Court similarly rejects Petitioner’s argument.

To the extent that Petitioner seeks to raise other arguments in which he claims error in his sentence, it is beyond dispute that any such claimed errors were not raised in a timely § 2255 petition and therefore cannot be raised herein.<sup>1</sup> Moreover, Davis' motion to now withdraw his petition is DENIED. Doc. 131.

### **III. CONCLUSION**

For the foregoing reasons, Petitioner Germain Davis' Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody is hereby **DENIED**.

Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability pursuant to 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

**IT IS SO ORDERED.**

Dated: April 14, 2017

/s/ John R. Adams  
**JOHN R. ADAMS**  
**UNITED STATES DISTRICT JUDGE**

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<sup>1</sup> The Government has properly argued and Davis has not refuted that his current petition was filed well beyond the one-year statute of limitations applicable to § 2255 proceedings and that no exception exists for any claim not premised on *Johnson*.